

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000634-001 DT

01/11/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

STATE OF ARIZONA

CARON L CLOSE

v.

CARSTEN LOELKE (001)

CARSTEN LOELKE
6301 E HUMMINGBIRD LN
PARADISE VALLEY AZ 85253

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case No. M-0751-TR2011010346

Defendant-Appellant Carsten Loelke (Defendant) was convicted in Scottsdale Municipal Court of driving at an unreasonable and imprudent speed. Defendant contends the trial court erred. For the reasons stated below, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On April 21, 2011, Defendant was charged with violating A.R.S. §28-701(A) (speed not reasonable and prudent).¹ On July 14, 2011, the trial court held a bench trial. Based on the evidence presented, the trial court found that Defendant violated the charged offense. On July 14, 2011, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID DEFENDANT PROPERLY PRESENT HIS ISSUES FOR APPEAL.

Defendant has submitted a narrative memorandum that neither clearly articulates any legal issue, references the record, nor cites any relevant authority. In terms of the remedy sought on appeal, Defendant is silent. Accordingly, Defendant's appellate memorandum fails to comply with Rule 8(a)(3), Super. Ct. R. App. P.—Civil, which states:

¹ Defendant was also charged with violating A.R.S. § 28-4135(C) (no proof of insurance). However, this charge was dismissed prior to the bench trial.

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Memoranda shall include a short statement of the facts with reference to the record, a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.

Here, Defendant mentions several issues. Merely mentioning an argument is not enough. “In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant’s position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.” *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). This Court “is not required to assume the duties of an advocate and search voluminous records and exhibits” to substantiate a party’s claims. *Adams v. Valley National Bank*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (Ct. App. 1984). When a litigant fails to include citations to the record in an appellate brief, the court may disregard that party’s unsupported factual narrative and draw the facts from the opposing party’s properly-documented brief and the record on appeal. *Arizona D.E.S. v. Redlon*, 215 Ariz. 13, 156 P.3d 430, ¶ 2 (Ct. App. 2007). Fundamental error aside, allegations without specific contentions or references to the record do not warrant consideration on appeal. *State v. Cookus*, 115 Ariz. 99, 104, 563 P.2d 898, 903 (1977). Fundamental error rarely exists in civil cases. *See Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37, ¶ 23 (Ct. App. 2005) (explaining that courts apply the doctrine sparingly and that fundamental error is error going to the case’s very foundation that prevents a party from receiving a fair trial). *See also Bradshaw v. State Farm Mutual Automobile Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) (doctrine of fundamental error in civil cases may be limited to situations when a party was deprived of a constitutional right). This Court finds no fundamental error in the record.

Moreover, to the extent that Defendant is challenging the sufficiency of the evidence, this Court has carefully considered the record. Based on the evidence presented at trial, any reasonable trier of fact could have concluded that Defendant violated A.R.S. §28–701(A).

III. CONCLUSION.

Based on the foregoing, this Court concludes Defendant failed to properly present his issues for appeal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT